SOUNDTRANSIT

RESOLUTION NO. 78-2

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority updating the existing delegated authority and policy for the procurement of contracts, materials, services, and work; for the acquisition, use, and disposal of real and personal property; for the execution of agreements with other public entities; and superseding Resolution No. 78-1.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under RCW Chapters 81.104 and 81.112 for the Pierce, King, and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit has broad powers to contract for materials, work and services and to secure or dispose of property and property rights as may be necessary for the benefit and operations of Sound Transit; and

WHEREAS, it is in the public interest to establish procedures to procure and contract for materials, services, and work, and to acquire use and dispose of real, personal and intangible property; and

WHEREAS, this policy encourages full and open competition, providing opportunities for small businesses, and implementing appropriate diversity and sustainability initiatives as permitted by law; and

WHEREAS, the Sound Transit Board is committed to protecting the environment for present and future generations, and encourages the increased use of environmentally preferable products and services while remaining fiscally responsible; and

WHEREAS, the Sound Transit Board has determined that it is in the public interest to facilitate certain procurements by delegating authority to review and approve contracts to the chief executive officer and the Board's current and subsequent committees.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority as follows:

Section 1. Delegated Authority

A. The Board has retained a chief executive officer (CEO) to operate the agency and to implement the mission, goals, objectives, policies, and guidelines established by the Board. Subject to Board oversight, the CEO is authorized to establish and implement business management, administrative, and employment policies, and to employ such personnel as the CEO determines necessary to effectively manage and operate the agency. The CEO may delegate this authority to appropriate Sound Transit employees to facilitate the efficient management and operation of the agency.

B. The CEO will regularly inform and consult with the Chair of the Board, the full Board, and the standing committees about business transactions, policies, and issues of significance to the agency.

C. The CEO is authorized to establish, select, fund, and administer existing or alternative employee compensation and benefit programs such as health, dental, vision, life, and disability insurance plans, and IRS Code 457 and 401(a) retirement plans and to pay the annual cost to administer and maintain these benefit plans within the adopted budget or other Board authorization.

D. Except in emergencies, only the Board acting as a body or a standing committee is authorized to direct the CEO to implement a policy or course of action.

E. The Board, acting as a body in a public meeting may at any time, adopt a motion or resolution to rescind or suspend all or any portion of authority delegated to the CEO in this Resolution.

Section 2. Procurement and Contracting Authority

A. Consistent with current and future laws, the CEO is directed to establish and implement policies and procedures relating to procurement, contracting, contract administration, and contract close-out. To improve efficiency and minimize the disadvantages of traditional low-bid procurement and design-bid-build project delivery, these policies and procedures will include

innovative procurement and contracting techniques and alternative procurement and project delivery methods.

Property, equipment, materials, supplies, services, and work should be procured efficiently and economically through a process that, to the extent practicable, facilitates full and open competition.

B. The CEO is authorized to award contracts with a value that does not exceed $200,000, when the amount authorized by the contract is included in the adopted budget or other Board authorization. For purchases or orders that are not included in current budget authorizations, such costs shall not exceed $50,000. Contracts awarded by the CEO that exceed $100,000 must be included in a quarterly report to the Board.

C. The Sound Transit Capital Committee and the Sound Transit Operations and Administration Committee (or successor committees) are authorized to approve the award of contracts within their areas of delegated responsibility when the contract value does not exceed $5,000,000.

D. The Board must approve contracts when the contract value exceeds $5,000,000.

Section 3. Competitive Bidding

A. Contracts for work, equipment, goods, materials, supplies, and non-professional services, the estimated cost of which exceeds $100,000, and which are normally procured based on price related factors alone, must be awarded through publicly-advertised solicitations for competitive, sealed bids when each of the following conditions are satisfied:

1. Time permits the solicitation, submission and evaluation of sealed bids,
2. Award will be made based on price and other price-related factors,
3. It is not necessary to conduct discussions with the responding bidders about their bids, and
4. There is reasonable expectation of receiving more than one sealed bid.

B. If required by law or when in the agency's best interests, the CEO may require performance/payment bonds and/or bid bonds to secure the performance of public works or other contracts.

C. The CEO may exercise discretion and reject any or all bids, or cancel or modify bid solicitations when the CEO deems it to be in the best interests of the agency to reject, cancel or modify bids or bid solicitations. The CEO may exercise discretion and waive minor irregularities in bid submittals.

D. The CEO may establish and use a small works process and limited public works process consistent with RCW 39.04.155.

Section 4. Competitive Proposals and Professional Services

A. Competitive Proposals. If soliciting competitive sealed bids is not feasible under the conditions described in Section 3, contracts to procure equipment, materials, supplies, services, or other work may be awarded through publicly-advertised solicitations for sealed proposals, taking into consideration price and other established evaluation factors, which must, at a minimum, include past performance on Sound Transit contracts, if any.

B. Professional Services. Except where the Board has approved a different procurement process in this resolution or other motion, professional services to be performed by consultants, including but not limited to planning, engineering, financial, marketing, appraisal, and other specialized professional services must be procured through requests for proposals or qualifications.

The CEO may initiate the procurement of professional services in the following circumstances:

1. When the services cannot be performed on a timely basis by employees of Sound Transit,
2. The services are not part of employees' regular and routine work,

3. The services require specialized professional or technical expertise not available from employees, or
4. The services are needed for only a specific period of time that does not warrant the hiring of an employee.

Section 5. Sole Source Procurements

A. Notwithstanding any other provision of this resolution, when the CEO makes a written determination that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without a competitive process.

The CEO is authorized to award sole source contracts when the contract value does not exceed $100,000. Except in emergencies, sole source contracts that exceed $100,000 must be approved by the Board.

B. Sole source contracts whose estimated value exceeds $10,000 must be included in a quarterly report to the Board required by Section 2.B.

Section 6. Proprietary and Nondiscretionary Items

A. The CEO is authorized to order, acquire and pay for spare parts, replacement parts and equipment that can be acquired only from the manufacturer or from a single distributor or licensee, and is authorized to enter into maintenance contracts for existing equipment and systems when only proprietary items and services are compatible with the existing equipment and systems when the expenditure is in the best interests of Sound Transit and is included in the adopted budget or other Board authorization.

Proprietary contracts whose value exceeds $100,000 must be included in a quarterly report to the Board required by Section 2.B.

B. Routine expenses of government, such as utilities charges, governmental taxes, publication and meeting expenses, and governmental fees for licenses and permits, may be acquired, ordered or paid in the best interests of Sound Transit by the CEO and is included in the adopted budget or other Board authorization.

C. The CEO is authorized to retain, or to cause to be retained through the general counsel, attorneys or law firms, or other appropriate professionals, experts, and support services, as necessary to provide general and specialized legal services, including litigation services, required by the agency. The CEO may pay for legal, expert, and related services based on a negotiated fixed fee for specific services or by hourly reimbursement not to exceed the established hourly rate, plus expenses, normally charged by the provider to the general public in the area when the expenditure is included within budget appropriations or other Board authorization. The CEO or general counsel may add the retained attorneys and law firms to the then-current on-call roster of qualified attorneys at the time the services are required and must manage the on-call roster consistent with the financial requirements of Motion No. M2001-61. The CEO or general counsel will inform the Board of the quarterly legal expenses.

D. The CEO is authorized to approve payments of claims, settlements, and judgments as may be in the best interests of Sound Transit when the expenditure is included in the adopted budget appropriations or other Board authorization.

E. The CEO is authorized to enter into reimbursement agreements with public and private utilities, including telecommunication providers, to relocate utilities when the expenditure is included in the adopted budget or other Board authorization.

Section 7. Emergency

Notwithstanding any other provision of this resolution, when any emergency requires the immediate execution of a contract for work or services, or any immediate purchases of materials, equipment, supplies, services or construction items, the CEO is authorized to execute any contracts or make purchases necessary to respond to the existing emergency, provided that the CEO must make a written finding that an emergency exists.

At the first regular Board meeting following the written finding of the existence of an emergency, the CEO must request Board ratification of the finding of emergency and of any

purchases or contracts awarded and/or executed pursuant to that finding if the amount exceeds $100,000.

The CEO must keep the Board informed about the emergency and the progress of any contracts or purchases executed to address the emergency.

Section 8. Capital Project Authorization

A. The Board will authorize capital projects on a project-wide basis, by individual contract or by other action, as the Board deems appropriate.

B. Projects Within Current Board-Adopted Budgets and Authorizations. For capital projects that are included in the adopted budget or other Board authorization, the CEO is authorized to conduct project planning, scoping, environmental reviews, permitting, and preliminary engineering and environmental testing necessary to the projects, provided the estimated combined cost of all such activities does not exceed $200,000.

C. Significant Changes in Capital Projects. The CEO must notify the Board in a timely manner if it becomes apparent that

1. a capital project cannot be completed within the authorized amount (including contingency),
2. delays to a capital project will have negative financial, community, or operations implications, or
3. there is a possibility of substantial scope change.

Section 9. Capital Projects Contract Administration

A. Reporting. Unless the Board requests more frequent reporting, the CEO will report quarterly to the Board on the progress and status of major capital projects.

B. Change Orders. When changes in the plans and/or specifications are necessary to properly accomplish the work, the CEO is authorized to execute change orders to the contract provided the following conditions are met:

1. The estimated cost of the changes will not exceed funds available in the approved contingency for the work as established in the subject contract,
2. The contract provides for change orders and the change order is within the scope of the original procurement, and
3. The individual change order has been approved by appropriately delegated staff. Legal counsel must review non-routine change orders.

Section 10. Cooperative and Joint Agreements with Government Entities

A. Subject to the monetary limitations in Section 2, the CEO may enter into cooperative and/or joint agreements on behalf of Sound Transit with federal, state and local governments for the provision or purchase of work, services (excluding the light-rail and regional express operations and maintenance agreements), governmental approvals and mitigation requirements, supplies, materials, and equipment whenever the CEO determines it to be advantageous. Work, goods, or services acquired for Sound Transit by federal, state, or local governments or public agencies in the manner prescribed by the provisions of applicable law, charter or regulation of such federal, state, or local governments is authorized in lieu of the conditions of this section.

B. Unless the agreement is authorized under Section 6.B and 6.E, the Board must approve any agreement with another government or public agency when

1. The government or public agency is acting in its governmental capacity and the agreement involves either a policy relating to the implementation of the regional transit plan or a non-routine governmental function, or
2. The agreement involves a significant non-administrative policy decision.

Section 11. Sound Transit Real Property

This section applies to all agreements and transactions relating to the acquisition, use, or disposition of real property, including but not limited to, purchase and sale agreements, deeds, leases, concession agreements, rental agreements, operating agreements, maintenance

agreements, licenses, easements, access permits, rights of entry and other use agreements (collectively Real Property Agreements).

A. Real Property Agreements that obligate Sound Transit or the other party to pay more than $200,000 but less than $5,000,000, may be approved by the Sound Transit Capital Committee or the Sound Transit Operations and Administration Committee (or successor committees) as appropriate. The Board must approve agreements when the financial obligation of either Sound Transit or the other party exceeds $5,000,000.

B. The CEO may execute Real Property Agreements to allow others to occupy or otherwise make use of Sound Transit property or to allow Sound Transit to occupy or otherwise use real property owned by others including leases, rental agreements, operating agreements, licenses, easements, use and access permits, rights of entry and other use agreements under the following conditions:

1. Neither Sound Transit nor the other party is obligated to pay more than $200,000,
2. The term (including any options) does not exceed five years,
3. The provisions conform to Sound Transit's real estate policies and procedures,
4. Sound Transit's financial obligation is within authorized budget limits, and
5. The agreement is in a form approved by legal counsel.

Such Real Property Agreements may include renewal options, options to sublease or assign. The CEO is authorized to enter into agreements memorializing the exercise of such options provided that the new agreement is in all ways consistent with this Section 10.B, including that the combined terms and financial obligations of the original and new agreements do not exceed the limitations of this Section 10.B.

C. The CEO may execute easements, licenses, access permits or temporary rights of entry, or allow the use of Sound Transit property when

1. the right granted is ancillary to the normal operation of Sound Transit or its property, and

2. there is no new financial obligation owed by Sound Transit.

Board approval is required to grant permanent easements (excluding standard utility easements that service Sound Transit such as gas, water, sewer, electrical, and telephone) or other property rights that deprive or substantially limit Sound Transit's use of essential property or property rights.

D. The CEO may execute Real Property Agreements to acquire or dispose of real property, when

1. Neither Sound Transit nor the other party is obligated to pay more than $200,000,
2. The provisions conform to Sound Transit's real estate policies and procedures,
3. Sound Transit's financial obligation is within authorized budget limits, and
4. The agreement is in a form approved by legal counsel.

E. The CEO must ensure compliance with all Real Property Agreement terms and is authorized to take necessary measures to cause compliance or to protect Sound Transit, including but not limited to, termination of an agreement, the giving of all notices provided for in an agreement, and filing actions for eviction, unlawful detainer, damages, and injunctive relief.

The CEO may also take all necessary actions in connection with surety bonds, letters of credit, cash deposits, or other legal security and insurance coverage required pursuant to any Real Property Agreements.

F. The CEO is authorized to take all necessary steps, including executing all required agreements, closing documents, deeds, decrees, and other necessary instruments to complete an authorized transaction to secure title to or to dispose of real property.

Sound Transit's price for the acquisition of or use of real property may not exceed Sound Transit's determination of value by more than ten percent or the authorized budget without specific Board approval.

G. The CEO is authorized to apply for the vacation of streets or roads, and to take all other steps necessary to acquire a fee interest in street or road ends or other public right of way ancillary

to Sound Transit development when the estimated acquisition costs do not exceed $200,000 and are included in the adopted budget or other Board authorization.

Section 12. Surplus Property (other than Real Property)

The CEO may declare Sound Transit personal property surplus and may dispose of such property as the CEO determines to be in the best interests of Sound Transit, subject to applicable laws and Sound Transit policies.

When feasible, surplus property should be disposed of in a manner that provides reasonable and fair compensation to Sound Transit, provided that when the costs associated with disposing of the property exceed its reasonable value, the CEO is authorized to offer the property, without charge, to other public agencies or to be used to support the poor and infirm as allowed under Article VIII, Section 7 of the Washington State Constitution.

Section 13. Miscellaneous Provisions

A. The CEO will ensure that Sound Transit complies with state law where specifically applicable to the award by Sound Transit of public contracts, including, without limitation, Title 39 RCW and Chapter 60.28 RCW.

B. The CEO may designate Sound Transit employees to act as the purchasing or contracting agents to implement the policies and provisions of this resolution.

C. When a procurement involves the expenditure of federal or state grant or contract funds, and the method of procurement required by such agency differs from the requirements of this resolution, the CEO will conduct the procurement in accordance with any mandatory applicable federal or state laws and regulations, and as required by the grant.

D. The CEO may include provisions in contracts awarded by Sound Transit that promote cooperation and motivate contractors or vendors to improve the project quality or function, to reduce the cost or to save time in construction or delivery by using such methods as shared savings for value engineering, incentive payments, reimbursement for proposal or bid preparation expenses and preconstruction planning and partnering.

E. The CEO is authorized to enter into agreements under which Sound Transit will provide reimbursable services to others and for which Sound Transit will receive reimbursement, when such services are part of normal Sound Transit operations.

F. The CEO, upon the written recommendation of the chief financial officer and legal counsel, may write-off uncollectible debts provided:

1. The amount of the debt is within the CEO's delegated authority specified in Section 2.B., and
2. Reasonable efforts to collect the debt have been made, and
3. The debt has been discharged in bankruptcy, or
4. The cost of collection exceeds the amount of the debt.

Section 14. Special Circumstances

Whenever in the judgment of the Board, special circumstances require a procedure different from that set forth herein, the Board may authorize the making of purchases, the ordering of work or the performance of services in such other manner as may be deemed to be appropriate to the circumstances.

Section 15. Protests

The CEO must establish procedures for considering and determining procurement protests and appeals. The CEO, or his or her designee, will render the final administrative determination on protests and appeals.

Section 16. Debarments and Suspensions

The CEO may establish procedures for debarment and suspension actions. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CEO is authorized to debar a person, firm or other legal entity for cause from consideration for award of contracts with Sound Transit for a period of not more than two years. The CEO is authorized to suspend a person, firm, or other legal entity from consideration for award of Sound

Transit contracts for a period of not more than six months if, in the CEO's discretion, there is probable cause for debarment.

The CEO's decision of debarment or suspension, which must be reported to the Board at the next regular Board meeting, will be the final and conclusive decision on behalf of Sound Transit, unless the Board determines otherwise.

Section 17. Privatized Contracts

The following provisions apply to contracts entered into by Sound Transit for work or services provided by private parties that retain an ownership interest in facilities used for such work or services:

A. The specifications for each privatization contract which involves construction, reconstruction, maintenance, or repair of a facility must contain a provision stating the specified hourly minimum wage, not less than the Washington State or Davis Bacon Act prevailing wage, whichever is higher, that must be paid to laborers, workers, or mechanics in each trade or occupation employed in the performance of such contract, either by the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated in the construction, reconstruction, maintenance, or repair of the facility.

B. The CEO must ensure payment of prevailing wages by contractors and subcontractors on such work.

Section 18. Small Business and DBE

Sound Transit is committed to a policy of providing fair and representative employment and business opportunities for small businesses and disadvantaged business enterprises in the procurement of equipment, materials, supplies and services purchased or work ordered for Sound Transit, consistent with those Sound Transit policies, procedures, and guiding principles in effect.

A. The CEO will take such steps as may be necessary to ensure that parties contracting with Sound Transit fully comply with all federal, state and local laws, regulations and ordinances pertaining to non-discrimination, equal employment and affirmative action.

B. The CEO is further authorized and directed to utilize small business and DBE requirements or goals in Sound Transit's contracting as may be applicable under federal or state grant contracts or as may be imposed by federal and state laws and regulations or by Sound Transit Board policy.

C. The CEO must monitor the usage of small businesses and minority, women, and disadvantaged business enterprises to ensure Sound Transit's performance in this respect is consistent with the law and the Board's adopted policies and procedures.

Section 19. Green Purchasing Initiatives

Sound Transit is committed to protecting the environment for present and future generations. That commitment includes encouraging and increasing the use of environmentally preferable products and services while remaining fiscally responsible. In its purchasing and contracting activities, the agency will balance overall life-cycle costs with minimizing environmental impacts, promoting human health and safety, conserving natural resources, and promoting sustainability.

Section 20. Supersession, Ratification, and Implementation

Resolution No. 78-1, as adopted by the Board of the Central Puget Sound Regional Transit Authority on April 9, 1998 is hereby superseded and replaced by this updated Resolution No. 78-2. All actions taken under Resolution No. 78-1 by the officers, employees, agents or consultants of Sound Transit are hereby ratified and approved.

The CEO may establish additional regulations, requirements, certifications and procedures as the CEO deems necessary to carry out the policies and provisions of this resolution.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on October 27, 2011.

Fred Butler
Board Vice Chair

ATTEST:

Marcia Walker
Board Administrator